

AMENDMENT under 37 C.F.R. § 1.111  
U.S. Appl. No. 10/762,674

### **REMARKS**

By this Amendment, Applicant cancels claim 20, thus claims 1-19 are all the claims pending in the present application. All claims stand rejected. Reconsideration and allowance of all pending claims are respectfully requested in view of the following remarks.

### **CLAIM REJECTIONS.**

#### **35 U.S.C. § 112**

Claims 3 and 4 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Office Action alleges there is insufficient antecedent basis for certain limitations in the claim. By this amendment, Applicant amends the preceding claims to clarify potential confusion. In view thereof, reconsideration and withdrawal of this rejection are respectfully requested.

#### **35 U.S.C. § 102**

Claims 1-2, 5-18 and 18-19 were rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent Application 2005/0024526 to Wang (hereinafter "Wang"). Applicant respectfully traverses this rejection for the following reasons.

The Office Action alleges Wang discloses all of Applicant's claim limitations including the following limitation from original claim 1 (Independent claim 11 includes similar limitations):

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the portable housing unit includes a locking retaining portion which in a first position facilitates insertion of an article for retaining the portable housing unit, and in a second position locks the portable housing unit to the article

The Office Action alleges this feature is disclosed by Wang element 15 (Figs. 1-4). Applicant respectfully disagrees. Element 15 is indisputably disclosed by Wang as being a "cover" which is detachable from housing 1. (Par. 0016). Thus it is believed Wang entirely lacks a locking retaining portion which in a first position facilitates insertion of an article, and in a second position locks the portable housing unit to the article.

In the event the Examiner disagrees, the Examiner is respectfully requested to identify which portions of Wang are considered analogous to Applicant's claimed "article" which is clearly not the same as the "portable housing unit" (e.g., claim 11).

With respect to Applicant's claim 2, it is respectfully submitted that that Wang cover 15 is NOT integral with housing unit 1. In fact, Applicant respectfully submits that Wang entirely lacks any retaining portion, clip or mechanism which is analogous to those claimed in the instant application. Instead, Wang appears to show a hole (e.g., right end of Fig. 1) which might (although it is not discussed by Wang) facilitate attachment to a separate article via a key chain, string or the like. This is in direct contrast to the various embodiments of Applicant's claims.

Since Wang fails to teach or suggest all the limitations of Applicant's independent claims, *prima facie* anticipation is not established. NOTE: Applicant has amended claims 1 and 2 above to recite "a locking retaining clip" to clarify antecedent basis for limitations in subsequent claims. This limitation is not included or necessary to overcome the cited prior art although there can be no dispute that Wang entirely lacks

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any retaining clip whatsoever. In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

35 U.S.C. § 103

Claims 3-4, 17 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over previously cited Wang in view of U.S. Patent Application 2001/0027151 to Siaperas (hereinafter "Siaperas"). Applicant respectfully traverses this rejection for the following reasons.

The Office Action admits the Wang fails to teach or suggest a retaining clip that is pivotally connected to the portable housing or is a carabineer clip. The Office Action attempts to make up for this notable deficiency by citing the D-clip of Siaperas and alleging it would be obvious to include in Wang "in order to secure the housing." Applicant respectfully disagrees.

First, Applicant respectfully submits that Siaperas is related to exercise equipment and is non-analogous-art to that of Wang or Applicant's invention. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992) (MPEP 2141.01(a)).

Applicant respectfully submits that the large scale exercise equipment of Siaperas is not the same field of endeavor as Applicant's present invention or the portable electronic media disks disclosed by Wang. Further, Siaperas discloses the use of one or more carabineer clips (e.g., 105) to help a user adjust the exercise equipment to various rings enabling a plurality of different configurations for exercising (Par. 0059), not to secure the exercise equipment to a desired article to prevent loss or damage

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(See Par. 0005 of Applicant's specification). Thus Applicant submits that this cited reference is not pertinent to Applicant's field of endeavor. Since Siaperas is non-analogous art the 103 rejection based thereon is believed to be improper for this reason alone.

Additionally, since Wang is entirely silent on any retaining mechanism or need for a retaining mechanism, there is simply no motivation in either cited reference that a carabiner clip or pivoting locking retaining clip would even be desired for securing the portable disk of Wang to a desired location. Respectfully, it appears such motivation is derived solely from improper hindsight of Applicant's invention.

Lastly, even if it were proper to consider both cited references in combination (*arguendo*) there is no teaching or suggestion of where or how, such a locking retaining mechanism would be located. In fact, Wang shows a hole in one end which may potentially be used for insertion of a key chain or string for retaining housing 1. Accordingly, Wang and Siaperas, taken alone or in combination, would fail to teach or suggest the limitations of, for example, claims 2, 3, 9 or 10.

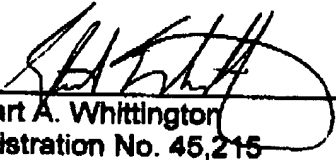
For all the foregoing reasons, Applicant respectfully submits that *prima facie* obviousness has not been established and requests the Examiner to reconsider and withdraw the 103 rejection of record.

#### **CONCLUSION.**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case.

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